# IMPLEMENTATION OF EXECUTIVE ORDER 28-91



A Report Prepared for the

***Legislative Finance Committee***

by



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# SUMMARY

Executive Order 28-91, issued September 26, 1991, directed state agencies to implement $31.4 million of "budget balancers" to keep the general fund budget in balance. As of November 6, documents implementing less than one-third of the "budget balancers" had been processed on the Statewide Budgeting and Accounting System (SBAS) and the Office of Budget and Program Planning's (OBPP) appropriation control system.

OBPP's memos attached to the Executive Order directed agencies to submit by October 25 the accounting documents necessary to reduce/adjust appropriations by the $23.9 million directed in the Order. As of November 6, OBPP had processed documents implementing $8.6 million of this total. OBPP had not yet processed documents from two key agencies: SRS--$6.9 million and Higher Education--$6.8 million. Documents had been processed for only $1.6 million of the $6.5 million in revenue estimate increases contained in the Executive Order. OBPP has instructed agencies to wait until after December 1 to make the $1.0 million in fund balance transfers contained in the Order.

Of the $8.6 million of appropriation reductions/adjustments processed, $4.0 million are reductions in personal services, $2.5 million are reductions in operating expenses, $0.3 million are reductions in equipment, and $1.4 million are reductions in grants, benefits, and local assistance.

Under the Executive Order, agencies must generate $4.0 million general fund vacancy savings in addition to the amounts imposed by the legislature in House Bill 2. While seven agencies had no additional vacancy savings imposed

in the Executive Order, others had significantly higher levels imposed by the Order than by the legislature. As a result of the combined impact, these agencies will have to achieve vacancy savings rates ranging from 4.4 percent to 12.7 percent in positions funded totally or partially with general fund in order to operate within their personal service appropriations.

After the Board of Regents' decision to increase tuition to offset a portion of its budget reduction, reductions in agency budgets comprise less than one-third of the total "budget balancers" contained in the Executive Order. Increased revenue estimates comprise 20.6 percent, tuition and fee increases 15.1 percent, and decreased caseload estimates another 16.4 percent. As a result, the "budget balancers" reduce the ongoing costs of state government relatively little. At least $13 million of the "budget balancers" are "one-time" savings realized by transferring fund balances, accelerating revenue audit collections, delaying new programs, and using tuition surcharge revenue. Even the $8.6 million in appropriation reductions/adjustments will not reduce the ongoing expenditure base significantly, since most of the savings are in "zero-based" categories, such as personal services, equipment, and grants, benefits, and local assistance.

The report provides a summary of the recent legal challenge to Executive Order 28-91 and the law it implements (section 17-7-140, MCA). It also provides a summary of a recent Florida Supreme Court decision concerning that state's gubernatorial budget reduction law.

# PURPOSE OF REPORT

This report provides:

1) updated information on the implementation of Executive Order 28-91, which directed state agencies to undertake $31.4 million of "budget balancers" during fiscal 1992. This information supplements the more detailed discussion of the Executive Order contained in the October 4 Office of the Legislative Fiscal Analyst report entitled <u>Analysis of Governor's Budget Balancers for FY1992</u>.

2) a summary of the legal challenge that has been filed in district court concerning the Executive Order and the law upon which it is based. The report also provides a summary of a recent Florida Supreme Court decision that declared that state's budget reduction statute unconstitutional.

# IMPLEMENTATION OF EXECUTIVE ORDER 28-91

## Documents Processed to Date

Executive Order 28-91, issued on September 26, 1991, directed all state agencies to "reduce their fiscal year 1992 appropriations and take such other actions as more specifically outlined in the Memorandum of the Office of Budget and Program Planning attached hereto and made a part of the order". The Office of Budget and Program Planning (OBPP) memos directed agencies to undertake several types of actions to keep the general fund budget in balance:

1) increase revenue estimates;

2) transfer fund balances; and

3) reduce general fund appropriations by cutting agency budgets and pass-through funds, creating non-expendable appropriations to meet "reversion targets", and switching funding sources.

This section of the report discusses implementation to date in each of these categories. Through November 6, documents implementing less than one-third of the "budget balancers" contained in the Executive Order had been processed on the Statewide Budgeting and Accounting System (SBAS) and OBPP's appropriation control system.

## Revenue Estimate Increases

As Table 1 shows, \$6.5 million of the \$31.4 million of "budget balancers" contained in the Executive Order are increased revenue estimates. However, OBPP's memo did not specify a uniform procedure for recording these revisions. As of November 6, only \$1.6 million of the revenue estimate increases contained in the Executive Order had been entered on SBAS. The Department of Corrections and Human Services (DCHS) had submitted SBAS forms (214R) increasing estimates for institution reimbursement by \$1.6 million.[1] The Department of Social and Rehabilitation Services (SRS) had not yet submitted similar documents for the \$1.0 million unreconciled balance. OBPP plans to incorporate the \$3.5 million in increased revenue the Department of Revenue (DOR) is directed to generate by the Executive Order as part of OBPP's overall revision of fiscal 1992 revenue estimates. This lack of

[1] While the actual SBAS document shows \$1.7 million, the Executive Order includes only \$1.6 million. DCHS staff are working to reconcile the difference.

uniformity and documentation makes it difficult to monitor the impact of the Executive Order.

| TABLE 1<br>Revenue Estimate Increases, FY92 | |
|---|---|
| REVENUE | |
| Liquor profit revenue | $1,000,000 |
| Corporation & natural resource tax initiatives | 1,916,250 |
| Income and misc. tax initiatives | 560,000 |
| SRS | |
| Unreconciled balance | 1,000,000 |
| CORRECTIONS AND HUMAN SERVICES | |
| FY90 cost settlements | 1,094,664 |
| FY92/93 institutional reimbursements | 507,065 |
| FY92/93 Court Ordered Evaluation Fees | 399,636 |
| TOTAL | $6,477,615 |

## Fund Balance Transfers

Over $1.0 million of the "budget balancers" in the Executive Order are fund balance transfers, as Table 2 shows. None of these transfers have yet taken place. OBPP has directed agencies to wait until after December 1 to make these transfers, to ensure that the "safe harbor" requirements for the Tax and Revenue Anticipation Notes (TRANS) are met.

| TABLE 2<br>Fund Balance Transfers | FY92 Total |
|---|---|
| SRS - Child support enforcement | $500,000 |
| Administration - Social security interest | 110,964 |
| - Internal service accounts | 146,000 |
| - Land grant funds | 50,000 |
| Governor's Office - ARCO balance | 28,000 |
| Military Affairs - federal balance | 183,431 |
| TOTAL | $1,018,395 |

## Reduce General Fund Appropriations

Appropriation reductions/adjustments constituted $23.9 million of the "budget balancers" contained in the Executive Order. OBPP's memos attached to the Executive Order directed state agencies to submit the accounting documents "reducing and/or adjusting appropriations" to implement the order by October 25, 1991.

As of November 6, OBPP had processed accounting documents (B212's) implementing $8.6 million of this total. Table 3 shows the total appropriation reduction/adjustments contained in the Executive Order for each agency and the total contained in documents processed through November 6. As the table shows, OBPP had not yet processed documents from two key agencies: SRS--$6.9 million and Higher Education--$6.8 million. For two other agencies, OBPP has processed documents that only partially implement the Executive Order. The $0.5 million "target reversion" for Coal Board funds (Department of Commerce) has not yet been processed, nor has the $0.9 million reduction in Office of Public Instruction (OPI) pass-through funds (vocational-education, gifted and talented, adult basic education and impact aid).

## TABLE 3
## Implementation of General Fund Budget Reductions/Adjustments Through November 6, 1991

| Agency | Exec. Order | Implemented | Over (Under) Exec. |
|---|---|---|---|
| Administration | $375,514 | $375,514 | $ 0 |
| Agriculture | 99,930 | 99,930 | 0 |
| Board of Public Education | 9,761 | 9,761 | 0 |
| Commerce | 556,000 | 56,000 | (500,000) |
| Comm. of Political Practices | 17,156 | 17,156 | 0 |
| Corrections & Human Services | 2,849,879 | 2,849,879 | 0 |
| Crime Control | 40,547 | 0 | (40,547) |
| Family Services | 2,273,989 | 2,273,989 | 0 |
| Fish, Wildlife & Parks | 34,459 | 34,459 | 0 |
| Governor | 75,000 | 75,000 | 0 |
| Health | 299,136 | 114,543 | (184,593) |
| Highway Traffic Safety | 15,920 | 15,920 | 0 |
| Historical Society | 79,046 | 79,046 | 0 |
| Justice | 581,221 | 581,221 | 0 |
| Labor | 46,200 | 46,200 | 0 |
| Lands | 750,711 | 750,711 | 0 |
| Library | 101,960 | 101,960 | 0 |
| Livestock | 65,000 | 65,000 | 0 |
| Military Affairs | 0 | 0 | 0 |
| Montana Arts Council | 7,860 | 7,860 | 0 |
| Natural Resources | 353,728 | 353,728 | 0 |
| Public Instruction | 1,162,149 | 303,850 | (858,299) |
| Public Service Commission | 0 | 0 | 0 |
| Revenue | 142,790 | 142,790 | 0 |
| School for Deaf & Blind | 56,829 | 56,829 | 0 |
| Sec. of State | 82,494 | 82,494 | 0 |
| SRS | 6,854,670 | 0 | (6,854,670) |
| State Auditor | 69,000 | 69,000 | 0 |
| Transportation | 75,414 | 75,414 | 0 |
| U-System | 6,840,000 | 0 | (6,840,000) |
| Total | $23,916,363 | $8,638,254 | ($15,278,109) |

Vocational Education Funds

House Bill 2 contains a $1.8 million line-item biennial appropriation for secondary vocational education funds passed through to school districts. The Executive Order directed OPI to reduce this appropriation by $792,549--a 44 percent reduction in the biennial appropriation. OPI and several school districts objected to this reduction as exceeding the 15 percent reduction authorized in Section 17-7-140. During October, OPI and OBPP staff met several times concerning budget reductions but reached no agreement. Since section 20-7-306, MCA, requires OPI to distribute vo-ed funds to districts by November 1, OPI has disbursed $765,000 (half the biennial appropriation, reduced by 15 percent). If OBPP reduces the appropriation by the amount contained in the Executive Order, only $242,451 in vo-ed funds will be available for distribution in fiscal 1993.

Reversion Targets

As discussed in the October 4 LFA report, the memos attached to Executive Order instructed agencies in certain cases to reduce an appropriation by more than 15 percent. In these cases, OBPP directed the affected agency to submit paperwork that:

1) reduced the existing general fund appropriation by the entire amount of the reduction;

2) established a new appropriation for the amount of reduction in excess of 15 percent. The new appropriation was to be established in a

nonexpendable category (expend/transfer nominal control code 5205) and coded as a "reversion target."

Table 4 shows the $1.0 million of appropriation reductions/adjustments processed through November 6 that are coded as "reversion targets". As detailed in the October 4 LFA report, the Director of the Legal Services Division, Legislative Council, has stated:

> There is no statutory authority to require any agency to transfer appropriated funds to a nonexpendable account. If an agency decides to transfer funds to an account that may not be spent, the agency would retain the ability to transfer the funds out of the account and spend the funds for the purpose for which they are appropriated.

TABLE 4
"Reversion Targets" Processed Through November 6

| Agency | Amount |
|---|---|
| Agriculture | $ 44,051 |
| Commissioner of Political Practices | 10,406 |
| Corrections and Human Services | 14,715 |
| Family Services | 480,541 |
| Governor's Office | 13,420 |
| Historical Society | 20,500 |
| Justice | 107,291 |
| Lands | 253,500 |
| Library | 2,524 |
| Natural Resources | 9,042 |
| Secretary of State | 59,500 |
| State Auditor | 5,292 |
| Total | $1,020,782 |

## Analysis of Appropriation Reductions/Adjustments

Of the $8.6 million of appropriation reductions/adjustments processed by November 6, $4.0 million are reductions in personal services, $2.5 million are reductions in operating expenses, $0.3 million are reductions in equipment purchases, and $1.4 million are reductions in grants, benefits, and local assistance. Table 5 shows these amounts by agency.

## TABLE 5
## Reductions/Adjustments in Appropriations

| Agency | FTE | Per. Serv. | Op. Exp. | Equip. | Grants/Benefits Local Assist. | Funding Switch | Totals |
|---|---|---|---|---|---|---|---|
| Administration | 0.00 | $ 63,124 | $ 312,390 | $ | $ 0 | | $375,514 |
| Agriculture | 0.00 | 19,756 | 80,174 | 0 | 0 | | 99,930 |
| Bd. of Public Ed. | 0.00 | 1,000 | 8,511 | 250 | 0 | | 9,761 |
| Commerce | 0.00 | 0 | 0 | 0 | 56,000 | | 56,000 |
| Comm. Political Practices | 0.00 | 0 | 17,156 | 0 | 0 | | 17,156 |
| Corrections & Human Ser. | 0.00 | 1,846,085* | 1,002,194 | 1,600 | 0 | | 2,849,879 |
| Crime Control | 0.00 | 0 | 0 | 0 | 0 | | 0 |
| Family Services | 0.00 | 549,090 | 133,422 | 0 | 1,220,546 | 370,931 | 2,273,989 |
| Fish, Wild., Parks | 0.00 | 0 | 28,459 | 6,000 | 0 | | 34,459 |
| Governor | 0.00 | 6,000 | 45,500 | 18,500 | 0 | 5,000 | 75,000 |
| Health | 0.00 | 70,652 | 39,891 | 0 | 4,000 | | 114,543 |
| Highway Traffic Safety | 0.00 | 0 | 0 | 0 | 15,920 | | 15,920 |
| Historical Society | 0.00 | 32,865 | 14,388 | 25,275 | 0 | 6,518 | 79,046 |
| Justice | 0.00 | 464,256 | 111,965 | 5,000 | 0 | | 581,221 |
| Labor | 0.00 | 29,825 | 6,480 | 2,700 | 7,195 | | 46,200 |
| Lands | 0.00 | 118,987 | 485,774 | 109,750 | 36,200 | | 750,711 |
| Library | 0.00 | 7,292 | 34,261 | 19,090 | 41,317 | | 101,960 |
| Livestock | 0.00 | 45,000 | 0 | 0 | 0 | 20,000 | 65,000 |
| Military Affairs | 0.00 | 0 | 0 | 0 | 0 | | 0 |
| Montana Arts Council | 0.00 | 0 | 5,480 | 2,380 | 0 | | 7,860 |
| Natural Resources | 0.00 | 210,228 | 93,500 | 50,000 | 0 | | 353,728 |
| Public Instruction | 0.00 | 233,850 | 20,000 | 50,000 | 0 | | 303,850 |
| Pub. Ser. Comm. | 0.00 | 0 | 0 | 0 | 0 | | 0 |
| Revenue | 0.00 | 142,790 | 0 | 0 | 0 | | 142,790 |
| School for D & B | 0.00 | 36,829 | 0 | 0 | 0 | 20,000 | 56,829 |
| Sec. of State | 0.00 | 0 | 37,494 | 45,000 | 0 | | 82,494 |
| SRS | 0.00 | 0 | 0 | 0 | 0 | | 0 |
| State Auditor | 0.00 | 60,418 | 0 | 8,582 | | | 69,000 |
| Transportation | 0.00 | 33,297 | 14,517 | 0 | 27,600 | | 75,414 |
| U-System | 0.00 | 0 | 0 | 0 | 0 | | 0 |
| Total | 0.00 | $3,971,344 | $2,491,556 | $344,127 | $1,408,778 | $422,449 | $8,638,254 |

* Includes $450,000 reduction in over-budgeted workers' compensation premiums.

None of the documents processed to date show that agencies plan to eliminate FTE. Rather, agencies plan to increase vacancy savings by delayed hiring of new staff authorized by the 1991 legislature or holding existing positions open for a period of time when they become vacant. The Executive Order's impact on vacancy savings varied dramatically from agency to agency. Seven agencies--Montana Arts Council, Commerce, Political Practices, Military Affairs, Public Service Commission, Fish, Wildlife and Parks, and Highway Traffic Safety--had no increased vacancy savings as a result of the order. However, as Table 6 shows, seven agencies had significantly higher levels of vacancy savings imposed in the Executive Order than were imposed by the legislature in House Bill 2. As a result of the combined impact, these agencies will have to generate vacancy savings rates varying from 4.4 percent to 12.7 percent in positions funded totally or partially with general fund in order to operate within their personal service appropriations.

**TABLE 6**
**Comparison of Vacancy Savings Imposed in HB2 and Executive Order, FY92**

| Agency | HB2 | Executive Order | Total | % Vacancy Savings |
|---|---|---|---|---|
| Corrections & Human Services | $1,021,107 | $1,396,085 | $2,417,192 | 4.4 |
| Family Services | 164,935 | 549,090 | 714,025 | 5.2 |
| Labor | 4,609 | 29,825 | 34,434 | 8.0 |
| DNRC | 142,695 | 210,228 | 352,923 | 9.3 |
| Livestock | 24,677 | 45,000 | 69,677 | 11.5 |
| SRS | 211,120 | 500,000 | 711,120 | 12.4 |
| Office of Public Instruction | 40,838 | 233,850 | 274,688 | 12.7 |

## Higher Education Budget Reductions

The Executive Order included $6.84 million of general fund budget reductions in higher education. At its November 1 meeting, the Board of Regents voted to generate $4.7 million in additional revenue to offset approximately 2/3 of the budget reduction by imposing a "one-time tuition surcharge" during the remainder of fiscal 1992. This surcharge totals $15 per credit hour, resulting in an increase of $210 per semester for full-time students at the university units and $180 for full-time students at the vocational-technical centers.

The Board then adopted budget reductions totalling $2.2 million as shown in Table 7. However, this amount may be reduced by $240,000. At the November meeting the Board reaffirmed its earlier motion that:

> "...the $6.84 million figure includes any amount by which funds appropriated for the benefit of higher education are removed from the budget of any other agency, such as the Department of Administration.

Since the Executive Order reduces $240,000 of the funds appropriated to the Department of Administration in the long-range building program for university system maintenance, the Commissioner of Higher Education (CHE) office plans to submit budget reduction documents totalling $1,925,522.

**TABLE 7**

| Institution | Fiscal 1992 Budget Cut |
|---|---|
| Community Colleges | $ 152,634 |
| Vocational Technical Centers | 65,525 |
| Six Units | 1,442,345 |
| Other Higher Ed | 197,105 |
| Commissioner's Office | 307,913 |
| TOTAL | $2,165,522 |

The Board also specified that the amount of the budget reduction will be reduced if fiscal 1992 revenue shortfalls are less than anticipated by OBPP. The method by which the reduction will occur is not clear. The CHE office proposes that university system general fund appropriations be reduced only by the amount shown in Table 7, rather than by $6.84 million. The revenue generated by the tuition surcharge would be reverted to the general fund at the end of fiscal 1992, when the size of the shortfall is known.

However, language enacted by the 1991 legislature specified that unexpended funds are to be retained by the university system, rather than reverting to the general fund. Section 17-7-304 states that all unexpended funds appropriated to the university units and agricultural experiment stations must be reverted to an account maintained by the Board of Regents. Funds in this account are statutorily appropriated for deferred maintenance or equipment purchases.

OBPP and CHE's office are still discussing the procedure for implementing the $6.8 million general fund budget reduction for higher education contained in the Executive Order.

## TYPES OF "BUDGET BALANCERS"

As a result of the Board of Regents decision to increase tuition to offset a portion of its budget reduction, the statistics concerning the "budget balancers" change: less than one-third of the "budget balancers" contained in the Executive Order are reductions in agency budgets, as Table 8 shows.

| TABLE 8<br>Types of "Budget Balancers" Fiscal 1992 | | |
|---|---|---|
| Type | Amount | Percent of Total |
| Reductions in Agency Operations | $10,092,804 | 32.1% |
| Delayed Programs | 1,624,366 | 5.2% |
| Increased Revenue Estimates | 6,477,615 | 20.6% |
| Tuition and Fee Increases | 4,752,544 | 15.1% |
| Fund Balance Transfers | 1,018,395 | 3.2% |
| Funding Switches | 763,358 | 2.4% |
| Caseload Decreases | 5,137,479 | 16.4% |
| Local Gov't/Schools Pass-Throughs | 1,545,760 | 4.9% |
| TOTAL | $31,412,321 | 100.0% |

## IMPACT ON 1995 BIENNIUM BUDGET

OBPP's revised revenue estimates are based on the assumption that the state has a long-term revenue problem: the revenue shortfall that occurred in fiscal 1991 will continue throughout the 1993 biennium and extend into the 1995 biennium. However, $13.0 million of the "budget balancers" imposed in the Executive Order are "one-time" savings, as shown in Table 9. The amounts realized by transferring fund balances, accelerating revenue audit collections, and switching funding sources will not be available again during fiscal 1993 or the 1995 biennium. Delaying new programs may generate savings in fiscal 1992, but once the new program is implemented, it becomes a part of the ongoing budget base. While the Board of Regents could decide to make the tuition surcharge permanent, to date they are characterizing the $4.7 million revenue increase as a "one-time tuition surcharge".

| TABLE 9<br>"One-Time" Savings | |
|---|---|
| Revenue estimate increases | $5,570,914 |
| Tuition increases | 4,673,000 |
| Fund balance transfers | 1,018,395 |
| Funding switches | 105,000 |
| Program delays | 1,624,366 |
| Total | 12,991,675 |

Even the $8.6 million of appropriation reductions/adjustments processed to date will not significantly "reduce the base" of ongoing state expenditures. As noted above, no agency has submitted documents to permanently reduce the number of FTE. Rather, agencies plan to generate $4.0 million additional vacancy savings by delayed hiring of new employees or holding vacant positions open longer. Under the current budgeting system, personal services current level budgets are based on staff employed at a "snapshot" date (generally in the second year of the biennium). Vacancy savings in fiscal 1992 will not be reflected in this snapshot. If agencies have filled new or vacant positions at the point at which the "snapshot" is taken, these personal services costs will be included in the 1995 biennium budget base. However, House Bill 2 does include the following language which may cause positions left unfilled for long periods to be excluded from the 1995 biennium budget requests:

> If a budget position remains unfilled more than 1 year, the approving authority may not include the position in the budget request base for the executive budget request that will be presented to the 53rd legislature.

Similarly, under the current budget system, fiscal 1992 reductions in equipment expenditures will not reduce the 1995 biennium budget base, since

these items are "zero-based". Agencies must justify the need for equipment in each budget. Reducing equipment purchases this biennium may, in fact, increase equipment requests presented to the 1993 legislature, since agencies may argue that replacement equipment is more urgently needed as a result of the delay.

The final spending category--"grants, benefits, and local assistance"--which will be reduced by over $7.0 million for fiscal 1992 when all documents are processed, is also "zero-based". While the fiscal 1992 savings realized by reducing pass-through funding to local governments and schools can be continued in the budget request for the 1995 biennium, the budget request for benefits will be based on anticipated Medicaid, AFDC, and foster care caseloads. In recent years, these caseloads and costs of these programs have grown, rather than declined.

## Court Challenges to Gubernatorial Budget Reductions

### Montana

On October 31, 1991, Nicholson v. State of Montana was filed in district court challenging the constitutionality of Section 17-7-140, MCA, which authorizes the Governor to reduce certain appropriations in the event of a revenue shortfall, and Executive Order 28-91, which implements this law. The action was filed by two current and one former member of the Boards of Public Education and Education; four legislators; the associated students organizations of Montana State University (MSU), University of Montana (UM), Eastern Montana College, and Montana Tech; the student Alliance for Disability

(UM); the MSU Faculty Council; and two citizen-taxpayers. The defendants named in the suit are the Governor and the State of Montana. A hearing on the action is scheduled for Thursday, November 14, in the First Judicial District Court (Helena).

The action presents five issues:

1) does Section 17-7-140 violate the principle of separation of power and constitute an unconstitutional delegation of legislative power?

2) are certain appropriation reductions and "reversion targets" directed in Executive Order 28-91 an exercise of veto power?

3) do certain appropriation reductions and "reversion targets" directed by the order exceed the 15 percent limitation imposed in Section 17-7-140?

4) can the Governor reduce general fund appropriations in anticipation of inadequate revenues to repay loans previously made to the school equalization account? Are these loans in violation of Section 17-2-107(2a), which requires "reasonable evidence that ...income will be sufficient to repay the loan within a calendar year" ?

5) does the Executive Order infringe on the Board of Regent's constitutional powers to manage the Montana university system and on the inviolateness of state university funds provided in Article X, Section 10 of the constitution?

The plaintiffs' action requests the district court to:

1) grant "a hearing on these issues as soon as possible and enter such preliminary injunctive relief as appropriate under the circumstances";

2) enter a declaratory judgement that Section 17-7-140, as implemented by Executive Order 28-91, is unconstitutional;

3) enter a declaratory judgement that Executive Order 28-91 violates Section 17-7-140 and 20-9-351;

4) order "such injunctive relief or other relief as appropriate under the circumstances to effectuate the declaratory judgement";

5) award the plaintiffs their attorney's fees and other reasonable costs of the suit.

Florida

While the constitutionality of executive budget reduction statutes has been considered in a number of states (Alaska- 1987; West Virginia-1981; and New Mexico-1961), the most recent case was in Florida.

The Florida Supreme Court held in a 6-1 decision that a Florida statute allowing the Governor and his cabinet to reduce state agencies' budgets was an unconstitutional delegation of legislative authority. The Florida court acted on the case quickly--the Governor announced recommended budget reductions in September, 1991, which were formally adopted by the cabinet on October 22. After the state appealed a district court decision that the law was unconstitutional, the Supreme Court assumed jurisdiction and issued its ruling on October 29. In its decision, the Supreme Court stated: "No motion for rehearing will be entertained by the court." The Florida legislature plans to convene in special session to address the budget deficit within a month.

The Governor's budget reduction order was in response to a projected fiscal 1992 general fund revenue shortfall of approximately 6 percent ($621.7 million). Florida statute allows a Commission (composed of the Governor and his cabinet) to: "reduce all approved state agency budgets...by a sufficient amount to prevent a deficit in any fund." State agency was defined to exclude the legislature from executive budget cuts, but not the judiciary. In making these reductions, the Commission:

> "shall implement any provision or priority provided in the General Appropriation Act...as a method for eliminating the deficit in the General Revenue Fund. In the absence of any direction by the Legislature in the General Appropriation Act, the commission...may reduce all approved state agency budgets...by a sufficient amount to prevent a deficit...."

The general appropriation act did not contain any "provisions or priorities" for budget reductions. The Commission's budget reductions were selective, rather than uniform across-the-board reductions. Some appropriations--such as emergency housing for homeless families and additional aid to dependent children--were entirely eliminated.

The Florida Supreme Court held the statute authorizing the Governor and cabinet to reduce appropriations was "unconstitutional as a violation of the doctrine of separation of powers." In the opinion, the court stated:

1) the statute was "...an impermissible attempt by the legislature to abdicate a portion of its lawmaking responsibility and to vest it in an executive entity";

2) "...the power to <u>reduce</u> appropriations, like any other lawmaking, is a legislative function."

3) "The legislative responsibility to set fiscal priorities through appropriations is totally abandoned when the power to reduce, nullify, or change those priorities is given over to the total discretion of another branch of government."

4) "...the Governor is not without recourse if he determines that an appropriation has been ...made such that sufficient revenue to defray the expenses of the state...will not be available...[H]e may..veto a bill at the time of its passage or...call the legislature into special session to balance the budget...."

5) "...the placing of the judiciary's fiscal affairs under the management of the executive branch...disregards the constitutional mandate of coordinate power-sharing...Thus, [the statutes], which subject the judicial branch to executive oversight, are also unconstitutional."

However, the court suggested that the legislature could enact a statute allowing executive budget reductions that would meet the constitutional test, provided sufficient guidelines were established:

> This is not to say the legislature cannot permit another branch or agency to respond to a budget crisis caused by unexpected events between legislative sessions. The legislature can delegate functions so long as there are sufficient guidelines to assure that the legislative intent is clearly established and can be directly followed in the event of a budget shortfall. Carefully crafted legislation establishing, among other things, the extent to which appropriations may be reduced, coupled with a recitation of reduction priorities and provisions for legislative oversight, might pass facial constitutional muster.

In a separate concurring opinion, one justice amplified this point. He noted that:

> Other states apparently have addressed the issue of budget adjustments in a constitutional manner without requiring a special session. While [the current

law] is unconstitutional, it does not mean that the legislature must reconvene every time there is a need for budget adjustments. I believe the legislature can establish a process with specific guidelines for making budget adjustments that is constitutional.

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